IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

MFA.No. 1611 of 1996()

AGAINST O.P.(MV).NO.482/1995 OF M.A.C.T., VADAKARA

APPELLANT/PETITIONER:

C.BABURAJ,VANMUKAM AMSOM,
DESOM, P.O.MOODADI, KOYILANDY
TALUK.

BY ADV. SRI.R.PARTHASARATHY

RESPONDENTS/RESPONDENTS:

1.THE MANAGING PARTNER,M/S.MALI PLASTIC INDUSTRIES, NEAR POST OFFICE KAKKAD, KANNUR (OWNER OF K.L-13/3768 MAHENDRA PICK UP VAN).

2.K.T.ULLAS KUMAR, ELAYAPURAM AMSOM COVA DESOM, KANNUR (DRIVER) DL.NO.50/92 BADGE NO.263/91.

3.UNITED INDIA ASSURANCE CO. LTD., DIVISIONAL OFFICE, P.B.NO.52 KANNUR (INSURER) IC NO.10080/003/31/20/6/26588.

BY ADV. SRI.K.P.BALASUBRAMANYAN FOR R3
SRI.K.C.SANTHOSHKUMAR FOR R2
SMT.K.K.CHANDRALEKHA
SRI.SUDHEESH THARAL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 25/05/2007 ALONG WITH M.F.A.NOS.1612 AND 1613 OF 1996 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NOS.1611, 1612 & 1613 OF 1996 (F)

Dated this the 25th day of May, 2007

J U D G M E N T

KOSHY,J.

In all these three appeals Motor Accidents Claims Tribunal, Vadakara rejected the claim petitions filed on the ground that the claimants were not able to prove that driver of the offending vehicle was negligent. The petitioners/appellants in M.F.A.No.1611/1996 and 1613/1996 were travelling in an ambassador car bearing registration no.KRM 252 from Badagara to Nandi Bazar on 19.8.1991. Wife and four children of another passenger who died in the accident filed O.P.(MV). No.1612/1996. At about 2 p.m. on that day a tempo van bearing registration No.KL-13/3768 coming from the opposite side hit the car. The van was driven by the 2nd respondent. According to the claimant the accident occurred due to the negligence of the 2nd respondent. The tempo van was insured by the 3rd respondent Insurance company. Before the tribunal

the claimants produced F.I.R. (Ext.A1) to show that the driver of the tempo van was negligent as police registered case against him. PWs.1 and 2 were passengers and they were examined and they deposed that accident happened only due to the negligence of the 2nd respondent. Second respondent did not come to the box and denied his involvement. PW1 in the deposition stated as follows:

> "ഞങ്ങൾ അയനിക്കാടു എത്തിയപ്പോൾ എതിർവശത്തു നിന്നു over speedൽ ഒരു വാൻ wrong side-ൽ കയറി. വാൻ നമ്പർ KRM 252 ആണ്. ഞാൻ വടകര നിന്നു നന്ദി ബസാറിലുള്ള വീട്ടിലേക്ക് പോവുകയായിരുന്നു (Page 3) തെക്കുനിന്നു വടക്കു വരികയായിരുന്നു. Van over speedൽ വന്നു. Van driverഉടെ negligence കൊണ്ടാണ് സംഭവം ഉണ്ടായത്. ഞങ്ങളുടെ ഭാഗത്തു യാതൊരു തെറ്റും കുറവും ഉണ്ടായിരുന്നില്ല. ഞാനാണു കാർ ഓടിച്ചിരുന്നത്. എന്റെ ഭാഗത്തു യാതൊരു തെറ്റും ഉണ്ടായിരുന്നില്ല. അവിടെ straight road ആണ്. ദൂരെ നിന്നു വണ്ടി over speedൽ വരുന്നതു കണ്ടപ്പോൾ വണ്ടി slow ആക്കി എടുത്തു സൈഡിലേക്ക് എടുത്തു. അപ്പോഴേക്കും tempo van വന്നു ഇടിച്ചു."

PW2 also deposed as follows:

> "ഞങ്ങൾ (2nd page begins) തെക്കോട്ട് വരികയായിര ുന്നു. തെക്കോട്ട് വരികയായിര ുന്നു. തെക്ക് നിന്ന് വടക്കോട്ട് വര ുന്ന ഒര ു tempo van വന്ന് കാറിനെ ഇടിച്ച ു. tempo van ഡ്രൈവറുടെ അശ്രദ്ധകൊണ്ടും വളരെ അധികം speed കൊണ്ടുമാണ് അപകടം ഉണ്ടായത്. Q. കാർ ഡ്രൈവറുടെ ഭാഗത്ത് അശ്രദ്ധ ഉണ്ടായിരുന്നുവോ ? A. ഇല്ല."

The above evidence adduced by PWs.1 and 2 was not shattered in cross examination. Appellants also produced copy of the scene mahazar before this Court as Annexure 1. It shows that the car which was proceeded from north to south was in the extreme east, that is, it is in the correct side whereas tempo van was coming in the wrong side and hit the car at the eastern most portion of the tar road. It shows that accident occurred only due to the rash and negligent driving of the 2nd respondent driver of the tempo van. Merely because PWs.1 and 2 were interested their oral evidence adduced before the tribunal cannot be ignored. Tribunal only quoted

the portion of the deposition that they were not responsible for the accident and did not quote that part of the deposition which shows that 2nd respondent was negligent. Documentary evidence like Ext.A1 F.I.R. and oral evidence fully establish that 2nd respondent was negligent. Additional documents produced before us namely the scene mahazer fully corroborates the evidence of PWs.1 and 2. In the above circumstances, the findings regarding negligence entered by the tribunal is set aside in this case. It is very clear that 2nd respondent was negligent and it is not under dispute that the vehicle was insured by the 3rd respondent. Since the tribunal rejected the case on the ground of negligence did not consider the quantum of compensation to be awarded. We are of the opinion that the above matter has to be considered by the tribunal. Therefore we remand the matter. Parties may appear before the tribunal on 31.7.2007 and the Tribunal should dispose of the matter as expeditiously as possible. The entire case records including the copy of scene mahazar produced before this Court along with

I.A.No.1015/2007 in M.F.A.No.1612/1996 should be forwarded to the tribunal urgently. This appeal is allowed by way of remand for deciding the quantum of compensation.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NOS.1611, 1612 & 1613 OF 1996 ()

J U D G M E N T

25th May, 2007